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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD HUMES,

Plaintiff,

vs.

ACUITY, A MUTUAL INSURANCE
COMPANY, a foreign corporation; DOES
1 through 10; and ROE CORPORATIONS
1 through 10, inclusive,

Defendants.

Case No.: 2:17-cv-01778-JAD-DJA

**Response to Defendant's Motion in
Limine to Preclude Offers of
Compromise and Evidence of Claim
Handling or, in the Alternative,
Motion to Bifurcate**

Plaintiff Donald Humes, by and through his undersigned counsel at the law firm of H&P Law, hereby files his Response to Defendant's Motion in Limine to Preclude Offers of Compromise and Evidence of Claim Handling or, in the Alternative, Motion to Bifurcate. This Response is made and based upon the pleadings and papers on file herein, the Memorandum of Points and Authorities, the attached exhibits, and any oral argument entertained by this Court at the time of the hearing of this matter.

DATED this 12th day of May, 2021.

H&P LAW

/s/ Marjorie Hauf

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

Factual Background

This case arises from Defendant Acuity's handling of an underinsured motorist made by Mr. Humes as a result of injuries he suffered in an April 6, 2013 motor vehicle collision. At the time of the collision, Mr. Humes was insured by Acuity; the insurance policy included \$1,000,000 in underinsured/uninsured (UM/UIM) coverage. Mr. Humes resolved his claim with the tortfeasor, Alan Petty, for his policy limits of \$100,000.

II.

Legal Standard

The primary purpose of a motion in limine is to prevent prejudice at trial.¹ This Court has authority to issue a preliminary ruling on the admissibility of evidence. The decision to do so is vested to the sound discretion of this Court.² Such motions are designed to simply the trial and avoid prejudice that often occurs when a party is forced to object in front of the jury to the introduction of evidence.³

As a threshold requirement, all relevant testimony is admissible.⁴ Relevant evidence is evidence that makes the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.⁵ The Court has the discretion to simplify the issues and to exclude

¹ *Brodit v. Cambra*, 350 F.3d 985, 1004-1005 (Cal 2003).

² *United States v. Kennedy*, 714 F.2d 968, 975 (9th Cir. 1983), cert. denied, 465 U.S. 1034 (1984).

³ *Fenimore v. Drake Construction Co.*, 549 P.2d 483 (Wash. 1976).

⁴ Fed. Rule of Evid. 402.

⁵ Fed. Rule of Evid. 401.



1 evidence, even if it is relevant, if its probative value is substantially outweighed by
2 the danger that it will confuse the issues or mislead the jury.⁶

3 4 **III.**

5 **Legal Argument**

6 Plaintiff does not oppose Defendant's request for bifurcation of the breach of
7 contract and extracontractual claims, as evidenced by the submission of a
8 stipulation regarding this matter on April 30, 2021. ECF No. 118. In addition to
9 providing for the most expeditious resolution of the matter, as set forth by
10 Defendant, bifurcation will allow a concise presentation of the issues. While it is
11 clearly possible to present all of the claims simultaneously, it is not does have
12 optimal results. The elements that must be proved to establish a breach of contract
13 are very separate and distinct from those that must be proved to establish the
14 extracontractual claims, and the evidence that is presented to support the claims
15 is different. It is difficult, if not impossible, for a jury to separate out what should
16 be considered in evaluating one claim, as opposed to the other, which results in
17 the breach of contract being assumed and absorbed into the extracontractual
18 claims.

19 Should bifurcation be denied, however, Defendant's motion to exclude
20 evidence of negotiations and claims handling must be denied. These issues are
21 germane to the bad faith claims and cannot be excluded simply because another
22 claim is simultaneously being presented. This would be the equivalent of excluding
23 evidence of a defective product in a products liability case because there are also
24 claims of negligence being presented. The logic is simply unsound and yields
25 ridiculous results.

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⁶ Fed. Rule of Evid. 403.



1 While Plaintiff concedes that, in judging the breach of contract claim, the jury
2 is largely going to be focused on the evaluation of the claim and what Acuity should
3 have paid, Defendant's continued classification of the breach of contract claim as a
4 value dispute is an oversimplification of the matter. The real question for the jury
5 in a breach of contract claim is whether Acuity has fulfilled its obligations under the
6 insurance policy – including paying what it owes.

7 The real question for the jury in a bad faith claim, however, is whether Acuity
8 reasonably and in good faith. One cannot evaluate whether an insurer acted in
9 good faith without being presented with *how* they acted. This necessarily involves
10 a discussion of the insurer's duties under the insurance policy, what the insurer did
11 to investigate the claim, how the insurer evaluated the claim, what information was
12 relied on in reaching that evaluation, whether that evaluation changed during the
13 pendency of the claim and why, and what was communicated to the insured,
14 among other things. The settlement offers that have been made by Acuity are
15 clearly relevant to these issues, as is Acuity's claims handling, including the
16 actions/inactions of the handling adjuster. The only prejudice to Acuity in
17 presenting the entirety of the evidence is that its behavior throughout the
18 pendency of Plaintiff's claim will be on display for the jury to judge, and that is
19 precisely what should happen – that is precisely what this trial is about.



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3 **IV.**

4 **Conclusion**

5 Based on the foregoing, Plaintiff respectfully request that Defendant's Motion
6 to exclude evidence of Acuity's conduct and decision-making, including settlement
7 offers, be denied.

8 DATED this 12th day of May, 2021.

H&P LAW

9 */s/ Marjorie Hauf*

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May, 2021, service of the foregoing **Response to Defendant's Motion in Limine to Preclude Offers of Compromise and Evidence of Claim Handling or, in the Alternative, Motion to Bifurcate** was made by required Electronic Service to the following individuals:

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